

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

1:25 p.m.
FILED

JAN 15 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

DONALD BEARDSLEE,

Plaintiff - Appellant,

v.

JEANNE S. WOODFORD, Director of the
California Department of Corrections;
JILL L. BROWN, Warden, California
State Prison at San Quentin,

Defendant - Appellee.

No. 05-15042

D.C. No. CV-04-5381-JF

ORDER

Appeal from the United States District Court
for the Northern District of California
Jeremy Fogel, District Judge, Presiding

Before: TASHIMA, THOMAS, and PAEZ

The panel has voted to amend the opinion by adding the following footnote
to the conclusion of section I on page 5:

Although we realize that, in this case, the denial of a preliminary injunction is tantamount to the denial of permanent injunctive relief because the execution date is imminent, the parties do not dispute that the "normal," preliminary injunction standard of review applies. We do not reach, nor do we decide, whether a different standard of review should apply under these circumstances.

With the amendment, the panel has voted to deny the petition for panel rehearing. The full court has been advised of the petition for rehearing en banc. No judge of the court has requested a vote on it within the time set for making such a request.

The petition for rehearing and the petition for rehearing en banc are
DENIED.